

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

THE CITY OF ALTOONA

**NPDES Permit #7707002
Polk County, Iowa**

**ADMINISTRATIVE CONSENT
ORDER**

NO. 2012-WW- 13

TO: Karen Oppelt
Public Utilities Superintendant
City of Altoona
407 8th Street SE
Altoona, IA 50009

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Altoona and the Iowa Department of Natural Resources (DNR) for the purpose of resolving violations related to a wastewater discharge and fish kill which occurred on October 10, 2011.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Ted Petersen, Supervisor
DNR Field Office #5
401 S.W. 7th Street
Des Moines, IA 50309-4611
Phone: 515-725-0268

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-281-8889

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 (wastewater) and the rules adopted or permits issued pursuant to that part, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties

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III. STATEMENT OF FACTS

The DNR and the City of Altoona (Altoona) agree to the following facts:

1 Altoona owns and operates a sanitary wastewater collection system that is connected to the Des Moines Metropolitan Wastewater Reclamation Authority system. The Altoona collection system includes a lift station at 1394 8th Street SE, Altoona, Iowa.

2 On October 10, 2011, Altoona notified the DNR that a bypass at the lift station located at 1394 8th Street SE had resulted in the discharge of approximately 170,000 gallons of untreated wastewater. Altoona reported that the discharge was believed to have begun on October 8th but had not been discovered until October 10th.

3 At 2:00 p.m. on October 10th, DNR personnel met with Altoona employee Jim Utter at the lift station. Small pools of grey colored water with sewage odor were observed near the lift station. The grassy area was saturated west and north of the lift station and the once standing vegetation was lying down indicating high surface flows had recently occurred in that area. To the west of the lift station the flow entered a storm water detention basin that outlets to the north. From the outlet the surface flow travels east under 8th Street via a culvert and then enters a subsurface tile until it outlets on private property. Following the outlet the flow is via an unnamed tributary through a pasture until it reaches Mud Creek just north of the bridge on 8th Street SE. The water in the drainage ditch was cloudy grey and had a sewage odor. Small minnow-like fish were observed dead along the unnamed tributary.

Mr. Utter discussed with the DNR options to minimize the impacts of the remaining sewage in the unnamed tributary. It was decided that city personnel would construct a small berm at the mouth of the unnamed tributary and capture the water via vacuum truck as a hydrant flushed water from the lift station area. This project was completed on that date. Approximately 10,000 gallons of water were flushed and collected by the City's contractor, Hydro-Klean LLC.

As a part of the investigation, the DNR notified Terrace Hills golf course of the incident because Mud Creek flows through the golf course. The creek was inspected within the golf course. Many dead fish, struggling fish and lethargic fish were observed near the surface along Mud Creek as it meandered through the golf course. There was a sewage odor coming from the creek. Within the golf course property, elevated ammonia levels and lower than normal dissolved oxygen were recorded throughout the entire length of Mud Creek.

The DNR also inspected Mud Creek in the area downstream from the golf course. One dead fish was observed. Active fish appeared to be behaving normally. Ammonia levels were tested and were elevated but dissolved oxygen levels had returned to normal. The following results were obtained from the inspection of Mud Creek:

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TABLE 1. Analysis Results and Sampling Locations 10-10-11

Map Id. Number	Location	Hach Kit Ammonia	Sewage Odor	Dead Fish Observed
1	Detention Basin	2.3 ppm	Yes	No
2	Point before it goes under road	2.8 ppm	Yes	No
3	Pasture	3+ ppm	Yes	Yes
4	Pasture	3+ ppm	Yes	Yes
5	Pasture	3+ ppm	Yes	Yes
6	Upstream Mudcreek	0.6 ppm	No	No
7	At Mud Creek	3+ ppm	Yes	Yes
8	Downstream Mudcreek	3+ ppm	Yes	Yes
9	Golf Course, First Bridge	3+ ppm	Yes	Yes
10	Golf Course, Second Bridge	3+ ppm	Yes	Yes
11	Golf Course, Third Bridge	3+ ppm	No	Yes
12	Golf Course, Last Bridge	3+ ppm	No	No
13	38 th Ave. Bridge	2.2 ppm	No	No

DNR Fisheries Biologist Ben Dodd was notified of the incident.

4. On October 11, 2011, DNR personnel met with Mr. Utter at the lift station. The flow path of the sewage release was walked again. Water samples were field tested for ammonia, dissolved oxygen, temperature, and pH. Ammonia levels had decreased in the unnamed tributary, the mouth of the unnamed tributary, and immediately downstream in Mud Creek. Live fish were observed approximately 75 feet downstream from the mouth of the unnamed tributary. In addition to the field testing, water samples were taken for laboratory testing.

Mud Creek was re-inspected on this date. Many dead fish were observed along the entire stretch of the creek within the golf course property. At the east edge of the golf course property, a large pool existed. Within the pool, many fish were observed to be near the surface which can indicate low dissolved oxygen levels. Dead fish were also observed at this pool. Field tests indicated that ammonia levels were elevated and that dissolved oxygen levels were very low. DNR Fisheries Bureau also conducted an investigation and assessment of the fish kill on this date. The following sampling results were obtained by the DNR:

TABLE 2. Analysis Results and Sampling Locations 10-11-11

Map Id. Number	Location	Hach Kit Ammonia	Ph	Temp.	D.O.	Sewage Odor	Dead Fish Observed	Lab Sample Collected
1	Point before it goes under road	0.5 ppm	n/a	n/a	n/a	Yes	No	No
2	Pasture	1.8 ppm	n/a	n/a	n/a	Yes	Yes	No
3	Upstream of Tributary	0.4 ppm	8.6	56°F	3-4	Yes	Yes	Yes
4	Point of Tributary	3+ ppm	8.8	56°F	3-4	Yes	Yes	Yes

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5	Downstream of Tributary	0.5 ppm	8.5	56°F	3-4	Yes	Yes	Yes
6	Golf Course, First Bridge	3+ ppm	8.6	56°F	2-3	unknown	Yes	Yes
7	Golf Course, Third Bridge	3+ ppm	n/a	n/a	n/a	unknown	Yes	No
8	Golf Course, Last Bridge	3+ ppm	8.6	60°F	1	unknown	Yes	Yes
9	38th Ave Bridge	3+ ppm	8.7	63°F	4-5	No	No	Yes

TABLE 3. Analysis Results of Grab Samples from State Hygienic Laboratory 10-11-2011

Map Id. Number	Location	Total Kjeldahl Nitrogen as N	Nitrate + Nitrite Nitrogen as N	Ammonia Nitrogen as N
3	Mud Creek Upstream	1.0 mg/L	<0.10 mg/L	<0.05 mg/L
4	Mud Creek at Point	4.7 mg/L	<0.10 mg/L	3.5 mg/L
5	Mud Creek Downstream	2.0 mg/L	<0.10 mg/L	<0.05 mg/L
6	Mud Creek Golf Course	7.2 mg/L	<0.10 mg/L	5.3 mg/L
8	Golf Course, Last Creek Crossing	8.8 mg/L	<0.10 mg/L	7.6 mg/L
9	Mud Creek and 38 th Ave	5.0 mg/L	<0.10 mg/L	4.0 mg/L

5. On October 13, 2011, the DNR conducted a follow-up investigation of the area of the sewage release. Ammonia levels had continued to drop and no new dead fish were observed. Live fish appeared to be behaving normally at the time.

6. On October 20, 2011, a Notice of Violation was issued to Altoona due to the unpermitted discharge of sewage.

7. On October 28, 2011, Altoona submitted an incident report summarizing the bypass incident that occurred due to the lift station malfunction.

8. On November 21, 2011, Altoona was informed of the intended enforcement action, monetary penalty, and fish restitution. On November 22, 2011, written confirmation of the enforcement action was sent by DNR to Altoona.

9. The DNR has calculated the total number of fish killed to be 1,011 with a total valuation of \$6,292.94. Pursuant to Iowa Code section 481A.151, the DNR shall also assess investigative costs related to the wildlife damage. The DNR Fisheries Bureau incurred investigative costs of \$361.78 and DNR Field Office #5 incurred investigative costs in regard to this matter of \$1,022.15. The total wildlife restitution owed is \$7,676.87.

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IV. CONCLUSIONS OF LAW

The DNR and Altoona agree that the following conclusions of law are applicable in this case:

- 1 Pursuant to Iowa Code section 455B.186(1), a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the director.
- 2 Pursuant to 567 IAC 63.6, bypasses from any portion of a treatment facility or from a sanitary sewer collection system designed to carry only sewage are prohibited.
- 3 Pursuant to Iowa Code section 481A.151, a person who is liable for polluting a water of the state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal, including fish, by the pollution.

V. ORDER

By the execution of this Order, the DNR orders and Altoona agrees to the following:

- 1 Within 60 days of the issuance of this Order, Altoona shall submit to DNR Field Office #5 a report detailing Altoona's standard operating procedures for lift station operation and maintenance and a plan to maintain future employee awareness of the standard operating procedures.
- 2 Within 30 days of the issuance of this Order, Altoona shall pay an administrative penalty in the amount of \$500 to the DNR.
- 3 Within 30 days of the issuance of this Order, Altoona shall pay fish restitution pursuant to Iowa Code section 481A.151 in the amount of \$6,292.94 and investigative costs of \$1,383.93 related to the wildlife damage. These assessments may be paid with a single check in the amount of \$7,676.87.

VI. PENALTY

- 1 Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.
- 2 Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at IAC Chapter 567 - 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of

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an administrative consent order with an administrative penalty of \$500. The DNR has calculated the penalty to be assessed in this case as follows:

a. Economic Benefit. The DNR has determined that minimal economic benefit was achieved by Altoona in this case in that the costs related to remediation of the sewage release met or exceeded any costs avoided in the failure to prevent the release. Therefore no penalty is assessed for economic benefit.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. In this case the unauthorized release of raw sewage through this bypass caused actual, rather than threatened, environmental harm. Elevated pollutant levels were documented and a fish kill resulted from the release. Due to the fact that Mud Creek passes through a golf course, there was also a risk to human health. This risk was diminished due to the time of year that the release occurred. The delay in discovery of the release and the documented impact to the environment warrant the assessment of a penalty in the amount of \$1,000 and this amount is hereby assessed.

c. Culpability. Proper operation and maintenance by Altoona of the lift station at which the release occurred could have prevented, or diminished the risk of, the release which occurred in this case. Procedures should have been in place to allow the release to have been discovered more rapidly than occurred. The bypass is believed to have begun on October 8, 2011 and was not discovered until October 10, 2011. Based upon these facts, a penalty of \$500 is assessed.

d. Mitigating factors. Once the bypass was discovered, Altoona personnel acted quickly to notify the DNR and kept the DNR apprised of the incident and their response actions. Altoona was cooperative throughout the investigation and implemented all remedial actions requested by DNR. Based upon the remedial actions undertaken by Altoona and the cooperation of Altoona in regard to the investigation of the bypass, the penalty assessed by this Order is hereby reduced by \$1,000.

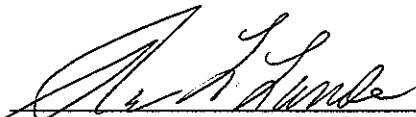
VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of Altoona. For that reason, Altoona waives the right to appeal this Order or any part thereof.

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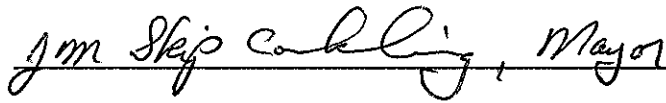
VIII. NONCOMPLIANCE

Failure to comply with this Order may result in referral to the Attorney General to obtain injunctive relief pursuant to Iowa Code section 455B 191. Compliance with section V. of this Order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this Order.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 27th day of
April, 2012



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Dated this 27th day of
April, 2012

NPDES #7707002; Field Office #5; Jon Tack; EPA; Water Quality Bureau; I.C. 1